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Written statement* submitted by the Foundation for Aboriginal and Islander Research Action Aboriginal Corporation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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UPR - Australia

The Australian Government continues its terrible record of breaching the fundamental human rights of the Aboriginal Peoples and Torres Strait Islander Peoples.

The recent Universal Periodic Review (UPR) examination of Australia in 2015 clearly reveals that the Australian Government has not made a sincere effort to address the deprivation, poverty, ostracism and disempowerment of the first peoples of Australia as recommended in 2011. The Australian Government has not embraced the principles of the UPR and demonstrated a disregard towards demonstrating commitment to improved human rights through the peer review process.

It is clear that the Australian Government relies upon the status that Australians in general enjoy the highest standards of living, quality of life and freedoms amongst the populations of the world. Australia is seen to be a wealthy and vigorous nation unencumbered by military conflicts and civil disorder within its region. In this context little concern might exist about its human rights performance as a member of global community bound by the United Nations.

However the prosperity and liberalism seen to permeate the Australian standard of living masks the colonial status bound by racism against and oppression of the Aboriginal Peoples and Torres Strait Islander Peoples. For two centuries the British colonies and the subsequent Australian nation have exploited the first peoples of the Australian continent.

From the outset the territories and resources of the first peoples of Australia have been taken and developed without consent, without regard for property rights and without benefit sharing. To achieve this the first peoples suffered massive human costs as colonists expanded across the continent by extermination and annihilation of the Aboriginal Peoples and Torres Strait Islander Peoples. It was genocide as the official records of the British and Australian Governments reveal that they regarded Australia as *terra nullius* until the legal case known as *the Mabo decision* occurred in 1992, 214 years after the incursion.

In evidence the Australian Government has not addressed the historical injustices and the inequalities that are manifest between indigenous and non-indigenous peoples in Australia. Regrettably the UPR process has not encouraged Australia to face its history and obligations towards the first peoples of Australia.

The United Nations has before its human rights bodies all the evidence of Australia's breaches of human rights of the Aboriginal Peoples and Torres Strait Islander Peoples. There have been consistent and countless reports of the suffering of our Peoples and abundant recommendations for correction of the breaches of our human rights. FAIRA believes that all State members of the UN are informed and persuaded of the high-level and urgent need for Australia to find redress for the injustices and inequality against the first peoples. The evidence is before the United Nations.

Further the United Nations has developed the template for addressing the negative impacts of colonisation of the Indigenous Peoples of the world. The UN Declaration on the Rights of Indigenous Peoples is a clear statement that Indigenous Peoples are to enjoy the rights of all Peoples of the world. Those rights are identified in the Declaration on the Rights of Indigenous Peoples, but more conspicuously the obligations upon UN Members are enshrined in Chapter 11 of the UN Charter. This chapter calls upon UN Members to accept 'as a sacred trust' the obligation to promote the well-being of the peoples of non-self-governing territories, and 'to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses'.

FAIRA also makes reference to the annual recommendations, decisions and resolutions which arise from the Expert Mechanism on the Rights of Indigenous Peoples, the Permanent Forum on Indigenous Issues, the Human Rights Council and the General Assembly to promote and protect the rights of Indigenous Peoples. Particularly, in 2014, the UNGA World Conference on Indigenous Peoples established a specific list of actions which Member States should undertake to address the rights of Indigenous Peoples. The UPR process must give full credence to these instruments for development.

The Australian Government must be held to account for its compliance or otherwise of these human rights and political standards which frame the United Nations. While we can expect the UPR examination to bring to account the performance of the UN Member, Indigenous Peoples have every right to insist upon compliance with the standards and procedural parameters upon which the mandate and authority of the United Nations rest. The Australian Government must expect more exposure about its undertakings to promote and protect the rights of the Aboriginal Peoples and Torres Strait Islander Peoples.

FAIRA is most concerned about continuing entrenched racism in Australian political, legal and social life. In conformity with its colonial establishment over Australian territory the Australian Constitution, in force since 1901, does not have acknowledgement of or respect for the existence of and rights belonging to the Aboriginal Peoples and Torres Strait Islander Peoples. In 1967 important amendments were made to remove barriers to counting the first peoples in the Australian population, and to making laws about the first peoples. It is a strong concern that these changes did not amount to removal of race discrimination. Subsequent legal cases have determined that the parliaments of Australia can make laws which are racially discriminatory, and that the parliaments are under no obligation to consult with the first peoples before making discriminatory laws.

In 2010 the Australian Government signalled that it would reform the Australian Constitution to 'recognise' the Aboriginal Peoples and Torres Strait Islander Peoples. This undertaking remains at large and progress is unlikely as a national debate over 'recognition' sinks under intolerant attacks on the first peoples' rights. A change to the Constitution cannot be achieved without a 'double majority' of population votes, and only a small percentage of changes have ever succeeded under this procedure.

Complaints by first peoples of racial discrimination are increasing and political leadership in Australia seems more willing to consider and enact oppressive laws that breach the rule of law by targeting the first peoples. While the Racial Discrimination Act 1975 (RDA) remains an important deterrent to racial discrimination the legislation is not consistent with the provisions for 'special measures' as established in the international Convention on the Elimination of All Forms of Racial Discrimination.

While the Convention is deemed to protect Indigenous Peoples from being subjected to laws which are made without regard to their interests or benefit, and which are put in place without their specific consent, the Australian courts have ruled that the RDA does not require restraint in the interests of the Aboriginal Peoples and the Torres Strait Islander Peoples, and that the national parliament is unfettered by the Constitution or the legal system to make and enforce laws which are racially discriminatory. The parliaments of the States and Territories are restrained only by the limitations of the RDA, unless the national government overrides the RDA through legislative action.

The preceding information provides an introduction to the systemic racism in the political and legal system in Australia. While the Australian Government remains unfettered in making racially discriminatory laws it does not use these powers widely. Legislative discrimination is limited to the rights and interests of the first peoples and, more recently, to non-citizens of Australia such as refugees.

There are numerous and obvious examples of racial discrimination against the Aboriginal Peoples and the Torres Strait Islander Peoples. These are mostly noticed in the statistics of social disadvantage, such as poverty, housing, employment, health, education and dysfunction. A blatant indicator of racial discrimination against the first peoples is the extent of incarceration of the first peoples. These statistics were presented by civil society organisations during the preparations for the UPR examination of Australia.

While imprisonment in Australia shows only 194 persons per 100,000 are in imprisonment, for the first peoples the statistic is 2,240 per 100,000. This fact is irrefutable in exposing racism in the system.

As a final point, the Australian Government steadfastly refuses to engage with the representatives of Indigenous Peoples in Australia. Despite extensive claims to positive effort for the first peoples the Australian Government is holding a centralised and alien system of government over the first peoples. All financial support paid to indigenous organisations and communities restrict the rights of the people to make their own decisions. The administrative system keeps central government in control of local actions and choices.

Aboriginal and Torres Strait Islander Peoples established the National Congress of Australia's First Peoples (Congress) in 2011, after the Australian Government, under conservative administration, dismantled the Aboriginal and Torres Strait Islander Commission in 2005. The conservative administration resumed control of government in 2013 and subsequently shut down all financial support to the Congress.

The Australian Government now claims to consult locally with Aboriginal and Torres Strait Islander communities but that claim is not believed or supported by the people themselves.

The UPR process must be able to detect the oppression of peoples in their own territories and be able to seek remedy to the denial of self-determination.